

Message Text

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PAGE 01 PARIS 00243 060057Z

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ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 COME-00 FTC-01 JUSE-00 L-03

HEW-06 PRS-01 (ISO) W

----- 115501

R 051816Z JAN 76

FM AMEMBASSY PARIS

TO SECSTATE WASHDC 6563

INFO AMEMBASSY LONDON

UNCLAS PARIS 0243

EO 11652 N/A

TAGS: ATRD, FR

SUBJECT ANTITRUST: USG CASE AGAINST U.K. FIRM BEECHAM
GROUP LTD.

REF: (A) STATE 197417; (B) STATE 272036

1. AT THIS TIME, MINISTRY OF FOREIGN AFFAIRS (MFA) IS
UNABLE TO CONFIRM OR DENY THAT GOF IS ENGAGED IN ANTITRUST
PROCEEDINGS AGAINST EITHER BRISTOL-MEYERS OR
BEECHAM OR ANY SUCH PROCEEDINGS WITH RESPECT TO AMPICILLIN
OR OTHER SEMI-SYNTHETIC PENICILLIN. MFA HAS NOT YET
RESPONDED TO EMBASSY NOTE OF AUGUST 22, 1975, REQUESTING
NOTIFICATION OF SUCH ACTIONS. MFA ASSURES EMBASSY THAT
IT IS MAKING EVERY EFFORT TO HAVE RESPONSIBLE GOF AGENCIES
PROVIDE INFO FOR RESPONSE TO NOTE

2. PRIOR TO RECEIPT OF INJUNCTION AGAINST FURTHER
CONTACTS OUTSIDE OFFICIAL FRENCH CHANNELS (REFTEL B),
EMBOFF LEARNED FROM A REPRESENTATIVE OF BRISTOL-MEYERS
(FRANCE) THAT THERE IS (WAS) PENDING IN FRENCH COURTS A
PATENT-INFRINGEMENT SUIT BY BEECHAM AGAINST BRISTOL-
MEYERS FOR ALLEGED VIOLATION OF BEECHAM'S PATENT RIGHTS
WITH RESPECT TO AMOXICILLIN, A SEMI-SYNTHETIC PENICILLIN,
FOR WHICH BEECHAM CLAIMS EXCLUSIVE WORLDWIDE PATENT
RIGHTS.

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3. BOTH BEECHAM AND BRISTOL-MEYERS ARE NOW IMPORTING

AMOXICILLIN INTO FRANCE, BRISTOL-MEYERS OSTENSIBLY UNDER COLOR OF LICENSING ARRANGEMENT WITH BEECHAM NOW BEING LITIGATED IN U.S. BEECHAM DENIES THAT LICENSING ARRANGEMENT INCLUDES AMOXICILLIN, AND CLAIMS THAT ITS ORIGINAL PATENT REMAINS INTACT AND EXCLUSIVE.

4. BEECHAM'S INTEREST IN THE U.S. LITIGATION IS TO EXCLUDE ANY MENTION OF AMOXICILLIN FROM ANTRITUUST SETTLEMENT, WHICH MIGHT PREJUDICE BEECHAM'S CLAIM TO EXCLUSIVE PATENT RIGHTS AND PENDING PRIVATE ACTION IN FRENCH COURTS TO ESTABLISH SAME RIGHTS IN FRANCE.

5. BEECHAM HAS ALREADY SUCCEEDED IN CONVINCING A BRITISH COURT THAT BEECHAM'S PATENT RIGHTS ARE EXCLUSIVE IN U.K. AND NOT SUBJECT TO CONTESTED LICENSING ARRANGEMENT WITH BRISTOL-MEYERS.

6. BRISTOL-MEYERS OF COURSE WOULD BENEFIT FROM ANY ACKNOWLEDGEMENT BY BEECHAM THAT AMOXICILLIN WAS INCLUDED IN THE LICENSING ARRANGEMENT AND IS THEREFORE A NECESSARY PART OF ANTITRUST SETTLEMENT. HOWEVER, IMPORTANCE OF SUCH ADMISSION IN U.S. ANTRITUST SETTLEMENT WOULD HAVE UNCERTAIN WEIGHT IN ADJUDICATION OF SAME QUESTION OF FACT BY FRENCH COURT IN CONNECTION WITH PRIVATE PATENT SUIT
RUSH

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ANTITRUST, DRUG INDUSTRY, LITIGATION, MONOPOLIES
Control Number: n/a
Copy: SINGLE
Draft Date: 05 JAN 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976PARIS00243
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: I
Film Number: D760003-0378
From: PARIS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760186/aaaacypo.tel
Line Count: 87
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 75 STATE 197417, 75 STATE 272036
Review Action: RELEASED, APPROVED
Review Authority: castelsl
Review Comment: n/a
Review Content Flags:
Review Date: 21 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <21 JUN 2004 by barnescd>; APPROVED <12 AUG 2004 by castelsl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: ANTITRUST: USG CASE AGAINST U.K. FIRM BEECHAM GROUP LTD.
TAGS: ETRD, FR, US, BEECHAM GROUP LTD, RISTOL-MEYERS COMPANY
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006